

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 240 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

( No. 1 to 5 NO )

-----  
PATEL DUDABHAI PARBHUBHAI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR A. HAMEED KURESHI for Petitioner

MR. L.R.POOJARI, LD.GOVT. COUNSEL for Respondent No. 1

-----  
CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 26/08/97

ORAL JUDGEMENT

Upon hearing ld. counsel Mr. Akil Kureshi for the Petitioner, and ld. Government counsel Mr. L.R. Poojari, appearing on behalf of the Respondent State, it appears that the present petition requires a partial recognition and the matter requires to be transmitted to the concerned Collector for the decision of the disputes, according to law and on merits. This is required to be

done on the acceptance of the principle that, " the same person elevated to a higher cadre cannot sit in appeal upon the orders passed by himself, while discharging the official function while sitting on a lower pedestal. "

The dispute between the petitioner citizen and the Respondent State centres round the two pieces of land bearing Survey No. 851 admeasuring 5 Acres 27 gunthas, and Survey No. 855 admeasuring 6 Acres and 39 gunthas, situated at village Bharada under the Dhrangadhra taluka of the Surendranagar district. The dispute was in respect of the ownership of the two pieces of lands and the proceedings were initiated under section 37 (2) of the Bombay Land Revenue Code of 1879. There were more than one rounds of the litigation but ultimately the Gujarat Revenue Tribunal had preferred to remand the matter to the Assistant Collector, Dhrangadhra, in the proceedings which were registered as F-I-Case No. 148/77. The above said proceedings came to be decided by one Shri. Achalkumar Jyoti working as the Assistant Collector, Dhrangadhra, at the relevant time, under his orders dated July 24, 1978. Shri. Jyoti, the Assistant Collector had come to the conclusion that the entire land bearing Survey no. 851 would be of the ownership of the petitioner but the same could not be said to be true in respect of another piece of land bearing Survey no. 855. According to Shri. Jyoti, a piece of land admeasuring 2 acres out of the said survey number would be of the ownership of the petitioner, but the remaining land of the same Survey number admeasuring 4 acres & 39 gunthas would be the land belonging to the State. Feeling aggrieved with the above said orders pronounced by the Assistant Collector Shri. Achalkumar Jyoti, the petitioner had filed Appeal before the District Collector, Surendranagar. Meanwhile Shri. Achalkumar Jyoti, who had passed the orders in question while working in the capacity of the Assistant Collector, Dhrangadhra, came to be posted in the cadre of the Collector and was posted as District Collector, Surendranagar. Shri. Achalkumar Jyoti in this elevated position had heard and decided the appeal, which was against the orders pronounced by him in the capacity of the Assistant Collector. Being aggrieved and dissatisfied with the orders in the appeal before the District Collector, had carried the matter before the Gujarat Revenue Tribunal. It was inter alia pointed out to the Gujarat Revenue Tribunal that Shri. Achalkumar Jyoti could not sit in appeal against his own orders. Any how, this grievance was not recognised by the Gujarat Revenue Tribunal. The said orders are still against the petitioner, and therefore the present petition.

Ld. counsel Mr. Akil Kureshi appearing on behalf of the petitioner urges that, the orders pronounced by the Gujarat Revenue Tribunal require to be quashed and set aside and the matter requires to be remanded to the Collector, Surendranagar for a fresh decision, according to law and on merits; because when the appeal came to be heard & decided by Shri. Achalkumar Jyoti in the capacity of District Collector, Surendranagar, he was examining his own orders passed by him while working as the Assistant Collector. The grievance made by ld. counsel Mr. Akhil Kureshi in this respect is that, because of this fact situation it cannot be said that the appeal came to be decided, according to the established procedure and according to law and on merits. Ld. Govt. counsel Mr. Poojari has indeed tried to support the orders of the Tribunal, by saying that, merely because Shri. Achalkumar Jyoti has passed certain orders in the capacity of District Collector, Surendranagar, it cannot be said that an important right of appeal which was available to the petitioner came to be lost.

It is difficult, rather impossible to accept the contention coming from ld. Govt. counsel Shri. Poojari in this respect. Judicial comity would require that the same person although elevated to a higher position in a particular hierarchy cannot sit in appeal against his own orders passed, when he was attached to a position which would be lower in hierarchy. Needless it is to emphasis that such a procedural lacuna would result into the loss to the litigant of his statutory right to get his matter decided by the higher forum. This indeed has not appealed to the Gujarat Revenue Tribunal, but in my opinion, this is against the settled principles of dispensing of justice.

Therefore, in my opinion the present petition requires a partial recognition and after setting aside the orders passed by Gujarat Revenue Tribunal, the matter requires to be remanded to the District Collector, Surendranagar, for a fresh decision, according to law and on merits, after affording a reasonable opportunity of being heard to the petitioner. I therefore order accordingly. In the result, therefore, the present petition succeeds in part and the matter stands remanded to the Collector, Surendranagar, who shall decide the matter afresh as observed hereinabove. Rule is made absolute to the above extent only, with no order as to costs.

It would be appropriate if the Collector,  
Surendranagar, decides the matter as indicated above as  
early as possible, and at any rate within a period of  
three months from the date of the receipt of the writ of  
the present orders.

-----

/vgn.